

Proposed Technical Correction:

SECTION #. G.S. 160D-946 reads as rewritten:

"§ 160D-946. Required landmark designation procedures.

As a guide for the identification and evaluation of landmarks, the preservation commission shall undertake, at the earliest possible time and consistent with the resources available to it, an inventory of properties of historical, architectural, prehistorical, and cultural significance within its jurisdiction. ~~Such~~The inventories and any additions or revisions ~~thereof to them~~ shall be submitted as expeditiously as possible to the Office of Archives and History. ~~No regulation or amendment to a regulation~~ designating a historic building, structure, site, area, or object as a landmark ~~nor any amendment thereto may shall~~ be adopted, ~~nor may any and no property shall~~ be accepted or acquired by a preservation commission or the governing board, until all of the following procedural steps have been taken:

- (1) The preservation commission ~~shall~~ (i) ~~prepare and adopt~~ prepares and adopts rules of procedure and (ii) ~~prepare and adopt~~ prepares and adopts principles and guidelines, not inconsistent with this Part, for altering, restoring, moving, or demolishing properties designated as landmarks.
- (2) The preservation commission ~~shall make or cause~~ makes or causes to be made an investigation and report on the historic, architectural, prehistorical, educational, or cultural significance of each building, structure, site, area, or object proposed for designation or acquisition. ~~Such~~The investigation or report shall be forwarded to the Office of Archives and ~~History~~, History of the North Carolina Department of Natural and Cultural Resources.
- (3) The Department of Natural and Cultural Resources, ~~acting through the State Historic Preservation Officer~~, shall, upon request of the department or at the initiative of the preservation commission, be given an opportunity to review and comment upon the substance and effect of the designation of any landmark pursuant to this Part. ~~Any comments shall be provided in writing. If the Department does not submit its comments or recommendation in connection with any designation within 30 days following receipt by the Department of the investigation and report of the preservation commission, the commission and any governing board shall be relieved of any responsibility to consider such comments.~~ Resources is allowed 30 days from receipt of the preservation commission's [complete] investigation and report to provide written comments to the commission concerning the proposed designation or acquisition. Failure of the Department to submit its comments within the time allowed relieves the commission and the governing board of any responsibility to consider the comments.
- (4) The preservation commission and the governing board ~~shall~~ hold a joint legislative hearing or separate legislative hearings on the proposed regulation. Notice of the hearing shall be made as provided by G.S. 160D-601. Following
- ~~(5)~~ ~~Following the hearings~~, the governing board may adopt the regulation as proposed, adopt the regulation with any amendments it deems necessary, or reject the proposed regulation.
- (6) Upon adoption of the regulation, the owners and occupants of each designated landmark ~~shall be~~ are given written notice of ~~such the~~ designation within a reasonable time. One copy of the regulation and all amendments ~~thereto to it~~

shall be filed by the preservation commission in the office of the register of deeds of the county in which the landmark ~~or landmarks are~~ is located. In the case of any landmark property lying within the planning and development regulation jurisdiction of a city, a second copy of the regulation and all amendments ~~thereto to it~~ shall be kept on file in the office of the city or town clerk and be made available for public inspection at any reasonable time. A third copy of the regulation and any amendments shall be given to the local government building inspector. The fact that a building, structure, site, area, or object has been designated a landmark shall be clearly indicated on all tax maps maintained by the local government for such period as the designation remains in effect.

- (7) Upon the adoption of the landmark regulation or any amendment ~~thereto, it shall be the duty of to it,~~ the preservation commission ~~to give gives~~ notice ~~thereof of the regulation or amendment~~ to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes."

Explanation:

This technical correction was reviewed for inclusion in the GSC technical corrections bill this session, in order to change "Department of Cultural Resources" to "Department of Natural and Cultural Resources" in subdivisions (2) and (3), and make other general clean-up changes. The Commission directed staff to request the Department of Natural and Cultural Resources (DNCR) to review the rewrite of subdivision (3) by prior to inclusion in the bill.

We provided DNCR a copy of the proposed technical correction, along with explanation that the corrections are not intended to have substantive effect, and inquired as to whether there would be any concerns about the rewrite of subdivision (3). DNCR responded that the change in subdivision (3) from commenting on "the substance and effect of the designation" to commenting "concerning the proposed designation" would allow for broader comments from DNCR. They expressed that they were in favor of this change. DNCR also had a number of other comments and requests for changes to the statute, as follows:

- a) They interpret the statute as applying to repeals of landmark status and conclude that, under the statute, they should therefore have opportunity to comment for repeals. (G.S. 160D-945 is included as background below regarding landmark designation or repeal of landmark designation.)
- b) They suggest that the word "guidelines" in subdivision (1) be changed to "standards," consistent with 160D-947(c), as this appears to them an oversight missed in the last update of the statute. G.S. 160D-947 is included as background below and is the only other section using the terms "guidelines" and "standards" in Part 4 (Historic Preservation) of Article 9 (Regulation of Particular Uses and Areas) of Chapter 160D (Local Planning and Development).
- c) They suggest a change to subdivision (2) to clarify that the preservation commission is not always the party required to make an investigation, but that, in the case of a repeal of landmark designation, the proponent of the de-designation should make the investigation, since the repeal is not for preservation reasons.

- d) They questioned whether the proposed language in subdivision (3) allows them to comment in cases of repeal of landmark status. (This appears to be related to their first comment noted in (a) of this list.)
- e) They requested the addition of the word "complete" in subdivision (3) to clarify that they are allowed 30 days from "receipt of the preservation commission's complete investigation and report," since they often request more information than is initially provided.
- f) They questioned whether "proposed designation or acquisition" in existing subdivision (2) and in the rewrite of subdivision (3) means they are required to review any properties the commission acquires through 160D-942(3) and (11) (included in background below).

Background:

§ 160D-942. Powers of the historic preservation commission.

A preservation commission established pursuant to this Chapter may, within the planning and development regulation jurisdiction of the local government, do any of the following:

- (1) Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance.
- (2) Recommend to the governing board areas to be designated by ordinance as "Historic Districts" and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks."
- (3) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks to hold, manage, preserve, restore, and improve such properties, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions that will secure appropriate rights of public access and promote the preservation of the property.
- (4) Restore, preserve, and operate historic properties.
- (5) Recommend to the governing board that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause.
- (6) Conduct an educational program regarding historic properties and districts within its jurisdiction.
- (7) Cooperate with the State, federal, and local governments in pursuance of the purposes of this Part. The governing board or the commission, when authorized by the governing board, may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or federal law.
- (8) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof.
- (9) Prepare and recommend the official adoption of a preservation element as part of the local government's comprehensive plan.
- (10) Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this Part.

- (11) Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

§ 160D-945. Designation of landmarks.

Upon complying with G.S. 160D-946, the governing board may adopt and amend or repeal a regulation designating one or more historic landmarks. No property shall be recommended for designation as a historic landmark unless it is deemed and found by the preservation commission to be of special significance in terms of its historical, prehistorical, architectural, or cultural importance and to possess integrity of design, setting, workmanship, materials, feeling, and/or association.

The regulation shall describe each property designated in the regulation, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, or prehistorical value, including the land area of the property so designated, and any other information the governing board deems necessary. For each building, structure, site, area, or object so designated as a historic landmark, the regulation shall require that the waiting period set forth in this Part be observed prior to its demolition. For each designated landmark, the regulation may also provide for a suitable sign on the property indicating that the property has been so designated. If the owner consents, the sign shall be placed upon the property. If the owner objects, the sign shall be placed on a nearby public right-of-way. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

§ 160D-947. Certificate of appropriateness required.

(a) Certificate Required. – After the designation of a landmark or a historic district, no exterior portion of any building or other structure, including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features, nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished on the landmark or within the district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the preservation commission. The local government shall require such a certificate to be issued by the commission prior to the issuance of a building permit granted for the purposes of constructing, altering, moving, or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this Part. A certificate of appropriateness is required whether or not a building or other permit is required.

For purposes of this Part, "exterior features" include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior features" mean the style, material, size, and location of all such signs. Such "exterior features" may, in the discretion of the local governing board, include historic signs, color, and significant landscape, archaeological, and natural features of the area.

Except as provided in subsection (b) of this section, the commission has no jurisdiction over interior arrangement. The commission shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district that would be incongruous with the special character of the landmark or district. In making decisions

on certificates of appropriateness, the commission shall apply the rules and standards adopted pursuant to subsection (c) of this section.

(b) Interior Spaces. – Notwithstanding subsection (a) of this section, jurisdiction of the commission over interior spaces is limited to specific interior features of architectural, artistic, or historical significance in publicly owned landmarks and of privately owned historic landmarks for which consent for interior review has been given by the owner. The consent of an owner for interior review binds future owners and/or successors in if the consent has been filed in the office of the register of deeds of the county in which the property is located and indexed according to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior.

(c) Rules and Standards. – Prior to any action to enforce a landmark or historic district regulation, the commission shall (i) prepare and adopt rules of procedure and (ii) prepare and adopt principles and standards not inconsistent with this Part to guide the commission in determining congruity with the special character of the landmark or district for new construction, alterations, additions, moving, and demolition. The landmark or historic district regulation may provide, subject to prior adoption by the preservation commission of detailed standards, for staff review and approval as an administrative decision of applications for a certificate of appropriateness for minor work or activity as defined by the regulation; provided, however, that no application for a certificate of appropriateness may be denied without formal action by the preservation commission. Other than these administrative decisions on minor works, decisions on certificates of appropriateness are quasi-judicial and shall follow the procedures of G.S. 160D-406.

(d) Time for Review. – All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the application for a certificate of appropriateness is filed, as defined by the regulation or the commission's rules of procedure. As part of its review procedure, the commission may view the premises and seek the advice of the Division of Archives and History or such other expert advice as it may deem necessary under the circumstances.

(e) Appeals. –

- (1) Appeals of administrative decisions allowed by regulation may be made to the commission.
- (2) All decisions of the commission in granting or denying a certificate of appropriateness may, if so provided in the regulation, be appealed to the board of adjustment in the nature of certiorari within times prescribed for appeals of administrative decisions in G.S. 160D-405(d). To the extent applicable, the provisions of G.S. 160D-1402 apply to appeals in the nature of certiorari to the board of adjustment.
- (3) Appeals from the board of adjustment may be made pursuant to G.S. 160D-1402.
- (4) If the regulation does not provide for an appeal to the board of adjustment, appeals of decisions on certificates of appropriateness may be made to the superior court as provided in G.S. 160D-1402.
- (5) Petitions for judicial review shall be taken within times prescribed for appeal of quasi-judicial decisions in G.S. 160D-1405. Appeals in any such case shall be heard by the superior court of the county in which the local government is located.

(f) Public Buildings. – All of the provisions of this Part are hereby made applicable to construction, alteration, moving, and demolition by the State of North Carolina, its political subdivisions, agencies, and instrumentalities, provided, however, they do not apply to interiors of buildings or structures owned by the State of North Carolina. The State and its agencies may appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under G.S. 121-12(a) from any decision of a local preservation commission. The North Carolina Historical Commission shall render its decision within 30 days from the date that the notice of appeal by the State is received by it. The current edition of the Secretary of the Interior's **Standards for Rehabilitation** and **Guidelines** for Rehabilitating Historic Buildings shall be the sole principles and **guidelines** used in reviewing applications of the State for certificates of appropriateness. The decision of the North Carolina Historical Commission is final and binding upon both the State and the preservation commission. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 24, 51(a), (b), (d).)